The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MITCH CHANCE

Appeal No. 2004-0178
Application 09/507,379

ON BRIEF

Before STAAB, MCQUADE, and NASE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Mitch Chance appeals from the final rejection of claims 1 through 16, all of the claims pending in the application.

THE INVENTION

The invention relates to a "hydraulic vertical car lift which can be used to elevate a vehicle for servicing, repair or storage" (specification, page 1). Representative claims 1 and 9 read as follows:

1. A vehicle lift comprising:
a) a pair of spaced-apart ramps;
b) at least two cross members attached to and supporting the pair of spaced-apart ramps, each of the at least two cross members further having at least two opposed end blocks and at least one pulley attached to each end block;

c) four spaced-apart U-shaped columns, each of the U-shaped columns having a base, a top cap, located opposite the base, and a cross member receiver slot wherein the end blocks on the cross members are slidingly received in the slot;

d) a hydraulic cylinder; and,

e) a plurality of cables, each cable fixed at one end substantially in the center of the top cap of one of the U-shaped columns and the opposite end to the hydraulic cylinder, so that when the hydraulic cylinder is actuated, upward and downward movement of the cross members and the spaced-apart ramps occurs.

9. A vehicle lift, comprising:

a) four spaced-apart U-shaped columns, each having a base and a top cap;

b) a pair of ramps;

c) at least two cross members supporting the pair of ramps, each of the at least two cross members having opposing ends slidably received and held within a cross member receiver slot in one of the four spaced-apart U-shaped columns;

d) a hydraulic cylinder;

e) at least one cable having a securing end fastened substantially at the center position of the top cap of one of the four spaced-apart U-shaped columns and further having a pulling end attached to the hydraulic cylinder; and

wherein the at least one cable is maintained within the U-shaped column and is routed through a pulley on the end of one of the at least two cross members received within the U-shaped column, such that when operated, the hydraulic cylinder pulls said at least one cable through the pulley thereby raising the at least two cross members and the pair of ramps.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Martin	2,139,597	Dec. 6, 1938
Haumerson	2,624,546	Jan. 6, 1953
Clarke	3,536,161	Oct. 27, 1970
Nussbaum	4,076,216	Feb. 28, 1978
Baldwin et al. (Baldwin)	4,724,875	Feb. 16, 1988

Cook British Patent Document	2 003 116 A	Mar. 7, 1979
Pernod French Patent Document[1]	2 576 298 A1	Jul. 25, 1986

THE REJECTIONS

Claims 8 and 16 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter the appellant regards as the invention.

Claims 1, 2, 9 and 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Martin.

Claims 1 through 4, 8 through 12 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pernod in view of Cook.

Claims 5 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Baldwin.

Claims 5 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pernod in view of Cook and Baldwin.

Claims 6 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Clarke.

Claims 6 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pernod in view of Cook and Clarke.

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[1] The record indicates that an English language translation of this reference has been obtained by the examiner and mailed to the appellant.

Claims 7 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Nussbaum.

Claims 7 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pernod in view of Cook and Nussbaum.

Claims 8 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Haumerson.

Attention is directed to the brief (Paper No. 11) and to the final rejection and answer (Paper Nos. 9 and 15) for the respective positions of the appellant and the examiner regarding the merits of these rejections.[2]

DISCUSSION

I. The 35 U.S.C. § 112, second paragraph, rejection of claims 8 and 16

Claim 8, which depends ultimately from independent claim 1, and claim 16, which depends ultimately from independent claim 9, recite "an automatic shut off switch slidably mounted within at least one of the four spaced-apart U-shaped columns,

[2] In the final rejection, the examiner also rejected claims 8 and 16 under 35 U.S.C. § 112, first paragraph, and applied U.S. Patent No. 2,216,058 to Thompson as an alternative to Cook. Upon reconsideration (see pages 3 and 4 in the answer), the examiner has withdrawn this rejection and reference. In addition, although the statements of the 35 U.S.C. § 103(a) rejection based on Pernod in view of Cook in the final rejection and answer do not include claim 12, the examiner's explanation of this rejection clearly indicates that the omission was inadvertent.

substantially adjacent the cable therein such that when during vertical movement, the end block of the cross member contacts the automatic shut off switch, the vertical movement stops."[3] The examiner considers these claims to be indefinite "because it is not clear whether the vertical movement of the 'slidable switch' or the 'end block of the cross member' stops when 'the end block of the cross member contact[s] the automatic shut off switch'" (final rejection, page 4).

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. In re Johnson, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In determining whether this standard is met, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by

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[3] The term "the end block of the cross member" in claim 16 lacks a proper antecedent basis, as do the terms "the end blocks" and "the at least one U-shaped column having a plurality of spaced-apart locking tabs" in claim 11. Also, the recitation in claim 1 that the pulleys are attached to the end blocks is inconsistent with Figure 5 which shows the pulleys attached to cross members 26, 28, rather than to end blocks 30, and with the passage on page 11 in the specification describing pulley 60 as "fixed proximate the end block 30." In the event of further prosecution, steps should be taken to correct these informalities.

one possessing the ordinary level of skill in the pertinent art. Id.

To the extent that they are not reasonably clear on their face, when claims 8 and 16 are read in light of the underlying disclosure, particularly lines 15 through 21 on page 15 in the specification, it is readily apparent that the vertical movement mentioned in these claims is that of the cross member, not the slidably mounted shut off switch. Hence, the examiner's concern that the language in question renders claim 8 and 16 indefinite is unfounded.

Accordingly, we shall not sustain the standing 35 U.S.C. § 112, second paragraph, rejection of claims 8 and 16.

II. The 35 U.S.C. § 102(b) rejection of claims 1, 2, 9 and 10 as being anticipated by Martin

Martin discloses a vehicle hoist comprising four channeled or U-shaped corner posts 2, 2a, a vertically movable rectangular frame 5 composed of a pair of axle engaging bars 6 and a pair of transverse frame bars 4 having their extreme ends 3 slidably mounted in the corner post channels, cables 9, 10 and 11 respectively attached at one end to the upper end of a post 2 and at the other end to a slide block 16 mounted within post 2a, cable-guiding pulleys 12, 15, 17 and 20 disposed adjacent the extreme ends 3 of the frame bars 4, and a fluid cylinder 21 and

piston 22 operatively connected to the slide block for raising and lowering the frame 5 via the cables.

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

In finding that the vehicle lift recited in independent claim 1 is anticipated by Martin, the examiner reads the claim limitations relating to the cross members, the end blocks and the pulley attached to each end block on Martin's transverse frame bars 4, the extreme ends 3 of the frame bars and the pulleys 12, 15, 17 and 20, respectively. Similarly, in finding that the vehicle lift recited in independent claim 9 is anticipated by Martin, the examiner reads the claim limitations relating to the cross members, the opposing ends of the cross members and the pulley on the end of one of the cross members received within one of the U-shaped columns on Martin's transverse frame bars 4, the extreme ends 3 of the frame bars and one of the pulleys 12, 17 and 20, respectively. The fair teachings of Martin, however, do not support these findings.

More particularly, Martin describes the extreme ends 3 of the cross members as the portions of the cross members slidably mounted in the corner post channels. Figures 1 and 2 in the reference show the pulleys 12, 15, 17 and 20 as mounted on the cross members outside of the corner post channels, i.e., at locations other than the extreme ends 3. Thus, the extreme ends 3 do not constitute end blocks which are slidingly received in the slots of the U-shaped channels and have pulleys attached thereto as recited in claim 1. Similarly, none of the extreme ends 3 constitutes an end which is slidably received and held within a slot in a U-shaped column and has a pulley received within the U-shaped column as recited in claim 9. The examiner's determination to the contrary rests on an unreasonable interpretation of the Martin reference.

Thus, Martin does disclose each and every element of the vehicle lifts recited in claims 1 and 9. Hence, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of independent claims 1 and 9, and dependent claims 2 and 10, as being anticipated by Martin.

III. The 35 U.S.C. § 103(a) rejections of claims 5 through 8 and 13 through 16 based on Martin as the primary reference

The examiner's citations of Baldwin, Clarke, Nussbaum and Haumerson do not overcome the above noted deficiencies of Martin

relative to the subject matter recited in independent claims 1 and 9.

Therefore, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 5 and 13 as being unpatentable over Martin in view of Baldwin, the standing 35 U.S.C. § 103(a) rejection of dependent claims 6 and 14 as being unpatentable over Martin in view of Clarke, the standing 35 U.S.C. § 103(a) rejection of dependent claims 7 and 15 as being unpatentable over Martin in view of Nussbaum, or the standing 35 U.S.C. § 103(a) rejection of dependent claims 8 and 16 as being unpatentable over Martin in view of Haumerson.

IV. The 35 U.S.C. § 103(a) rejections of claims 1 through 16 based on Pernod as the primary reference

Pernod discloses a vehicle lift comprising four channeled or U-shaped corner columns 1, 2, 3, 4, a vertically movable rectangular platform 5 composed of a pair of vehicle runways 9, 10, and a pair of crosspieces 6, 7, having their ends slidably mounted within the column channels/slots 8, a hydraulic jack 15, cables 12a, 12b, 12c, 12d, respectively affixed at one end to the upper end of a column and at the other end to the jack, and cable-guiding pulleys 13 affixed to the ends of the crosspieces within the column channels/slots.

As indicated above, independent claims 1 and 9 require the vehicle lift recited therein to comprise a top cap for each of the U-shaped columns and cables fixed at one end "substantially in the center of the top cap" (claim 1) or "substantially at the center position of the top cap" (claim 9). In applying Pernod against these claims, the examiner finds that Pernod's columns 1, 2, 3, 4, are not disclosed as having top caps, but that cables 12a, 12b, 12c, 12d, are each "fixed at one end substantially in the center of the top end of the column" (final rejection, page 5). To cure the acknowledged failure of Pernod to disclose column top caps, the examiner turns to Cook. In view of Cook's disclosure of a vehicle lift having corner columns 7 with top caps for securing cables 5 and safety support rods 16 (see Figure 3), the examiner concludes that it would have been obvious "to have utilized a cap for each of the cables of [Pernod's] vehicle lift system in order to replace the cables quicker" (final rejection, page 5).

The combined teachings of Pernod and Cook, however, do not justify the examiner's conclusion of obviousness. To begin with, Pernod does not provide any factual support for the examiner's determination that cables 12a, 12b, 12c, 12d, are each fixed at one end substantially in the center of the top end of a column.

In this regard, Pernod does not show or describe exactly how the ends of the cables are affixed to the upper ends of the columns. Moreover, given the lack of any top cap structure on Pernod's columns, it is not clear how the ends of the cables could be affixed substantially in the center of the top end of the column. Although Cook discloses vehicle lift columns having top caps with cables affixed thereto, the position of cable affixation clearly lies at a position offset from the center or center position of each top cap (see Figure 3). In this light, the only suggestion for combining Pernod and Cook in the manner proposed by the examiner so as to arrive at the subject matter recited in independent claims 1 and 9 stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1 and 9, and dependent claims 2 through 4, 8, 10 through 12 and 16, as being unpatentable over Pernod in view of Cook.

Since the examiner's citations of Baldwin, Clarke and Nussbaum do not cure the foregoing deficiencies in the Pernod-Cook combination relative to the subject matter recited in independent claims 1 and 9, we also shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 5 and

13 as being unpatentable over Pernod in view of Cook and Baldwin, the standing 35 U.S.C. § 103(a) rejection of dependent claims 6 and 14 as being unpatentable over Pernod in view of Cook and Clarke, or the standing 35 U.S.C. § 103(a) rejection of dependent claims 7 and 15 as being unpatentable over Pernod in view of Cook and Nussbaum.

SUMMARY

The decision of the examiner to reject claims 1 through 16 is reversed.

REVERSED

LAWRENCE J. STAAB)
Administrative Patent Judge)
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) BOARD OF PATENT
)
JOHN P. MCQUADE) APPEALS AND
Administrative Patent Judge)
) INTERFERENCES
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JEFFREY V. NASE)
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